HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil Misc. Appeal No. 756 / 2000

Hemlata w/o. Shri Radhey Shyam, by caste – Soni, r/o. Sardarsahar, District – Churu.

----Appellant

Versus

1. Babu Khan s/o. Shri Bajid Khan, by caste – Musalman Kayamkhani, r/o. Sardarshahar, Ward No.26, Churu.

2. Barkat Khan s/o. Shri Mehaboob, by caste – Musalman Kayam Khani, r/o. Barjangsar, Tehsil – Sardarshahar, District – Churu.

3. National Insurance Company Ltd., Divisional Office, 12th Residency Road, Jodhpur.

----Respondents

S.B. Civil Misc. Appeal No. 399 / 2001

Barkat Khan s/o. Shri Mehaboob, by caste – Musalman Kayam Khani, r/o. Barjang , Tehsil – Sardarshahar, District – Churu.

----Appellant

Versus

1. Hemlata w/o. Shri Radhey Shyam, by caste – Soni, r/o. War No.4, Sardarsahar, District – Churu.

2. Babu Khan s/o. Shri Bajid Khan, by caste – Musalman Kayamkhani, r/o. Sardarshahar, Ward No.26, Churu.

3. National Insurance Company Ltd., Divisional Office, 12th Residency Road, Jodhpur.

----Respondents

For Appellants/respondents :Mr. Akshay Tiwari (for Claimant)

Mr. M.S. Soni for Mr. Rajesh Panwar (for owner)

Mr. Anil Bachhawat (for Insurance Company)

HON'BLE MR. JUSTICE ARUN BHANSALI

Judgment

19/09/2017

These appeals are directed against judgment and award dated 06.07.2000 passed by the Motor Accident Claims Tribunal,

Churu (‘the Tribunal’), whereby the Tribunal has awarded a sum of Rs.1,15,589/- as compensation to the claimant Smt. Hemlata for the injuries suffered by her alongwith interest @ 12% per annum from the date of application and it has further been directed that if the amount of compensation was not paid within a period of two months, 15% interest per annum would be payable.

The application for compensation was filed by the claimant-Smt. Hemlata, inter alia, with the averments that on 25.06.1999, the claimant alongwith her husband Radhey Shyam Soni, daughter Pooja and others was travelling in Jeep No.RJ-10-C-1098 from Sardarshahar to Ratangarh, which was being driven rashly and negligently by its driver Babu Khan, the Jeep collided with a Camel Cart, which resulted in injuries to Rewant Ram Jat, claimant, her daughter and one Ramgopal Soni. Based on the said averments, compensation to the tune of Rs.9,96,576/- was claimed.

Despite service, driver Babu Khan did not appear. The owner filed his reply and submitted that the Jeep was handed over to Radhey Shyam, which unfortunately met with an accident, however as the Jeep was insured with the Insurance Company, the liability, if any, was of the Insurance Company. The Insurance Company also filed its reply and denied its liability alleging that the passengers were being carried for hire and reward, which was in violation of policy conditions, the driver was not in possession of valid driving licence and, therefore, the Insurance Company was entitled to be exonerated.

The Tribunal framed 5 issues. On behalf of the claimant,

claimant herself and her husband Radhey Shyam were examined and several documents pertaining to the treatment of the claimant were produced. On behalf of the Insurance Company, statement of Indrajeet Singh (NAW-1) were recorded and insurance policy (Ex.-NA-1) was produced.

After hearing the parties, the Tribunal came to the conclusion that the accident occurred on account of rash and negligent driving by driver Babu Khan. While deciding the issue pertaining to the defence raised by the Insurance Company, the Tribunal came to the conclusion that the vehicle was registered as a private vehicle, the policy was issued for private use and, thereafter based on the statement of Radhey Shyam (AW-2), husband of the claimant that the Jeep was taken on hire @ Rs.3 per kilometer and the statement of claimant that the Jeep was taken on hire and as in reply to notice under Section 133 of the Motor Vehicles Act, 1988 ('the Act'), the owner Barkat Khan had indicated that the Jeep was 'booked' from Sardarshahar and was going to Jeewan Mata, came to the conclusion that as the vehicle was being used for hire and reward and the policy was issued for private use only, on account of violation of policy conditions, the Insurance Company was not liable to pay compensation. While assessing the quantum of compensation, the Tribunal based on the material available on record, assessed the compensation at Rs.1,15,589/- and passed the award as noticed hereinbefore.

While SBCMA No.756/2000 has been filed by the claimant Smt. Hemlata seeking enhancement of compensation and

aggrieved against exoneration of the Insurance Company, SBCMA No.399/2001 has been filed by owner Barkat Khan aggrieved against the exoneration of the Insurance Company and the quantum of compensation.

It is submitted by learned counsel appearing for the owner that the Tribunal committed error in coming to the conclusion that the vehicle in question was being used for hire and reward and wrongly exonerated the Insurance Company. It was submitted that except for the oral statements of claimant and her husband, there was no material available on record to come to a conclusion that the vehicle was being used for hire and reward and, therefore, the finding in this regard deserves to be quashed and set aside. Further submissions were made that the compensation awarded is excessive and the same therefore, deserves to be reduced.

Learned counsel appearing for the claimant submitted that the statement given by the claimant and her husband have been wrongly construed and from the material available on record, it cannot be said that the vehicle was taken on hire and, therefore, the exoneration of the Insurance Company is not justified. Further submissions were made that the Tribunal has awarded meager compensation towards the various injuries and permanent disablement suffered by the claimant, which deserves to be enhanced substantially.

Learned counsel appearing for the Insurance Company vehemently opposed the submissions. It was submitted that the

claimant Smt. Hemlata and her husband Radhey Shyam have categorically admitted taking the insured vehicle on hire and there is no dispute that the vehicle was registered for private use and the insurance policy was also issued for private use, wherein the use of vehicle for hire and reward was specifically prohibited and, therefore, for violation of policy conditions, the Insurance Company was rightly exonerated by the Tribunal and, therefore, the appeals filed by the appellants qua the Insurance Company deserves to be dismissed.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

A bare look at the statements of Radhey Shyam, husband of the claimant Smt. Hemlata, indicates that he has categorically stated that the Jeep was taken on hire @ Rs.3/- per kilometer and that he himself had taken the vehicle on hire; in her statement, claimant-Smt. Hemlata stated that the Jeep, in which they were going to Jeewan Mata was taken on hire by her husband and reiterated that the Jeep was taken on hire. Further, in reply to the notice under 133 of the Act, the owner Barkat Khan himself indicated that the Jeep was "booked" from Sardarshahar for going to Jeewan Mata. The said oral statements of claimant, her husband and the documents available on record are sufficient to come to a conclusion that the vehicle was being used for hire and reward by the owner of the vehicle. Further, it is not in dispute that the vehicle was registered as a private vehicle and the insurance policy was also issued for private use only. In those

circumstances, the finding of the Tribunal exonerating the Insurance Company from liability to pay compensation on account of violation of policy conditions does not call for any interference.

Coming to the aspect of the quantum of compensation awarded to the claimant, the Tribunal after thoroughly assessing the oral and documentary evidence available on record, has quantified the compensation to be awarded to the claimant. Learned counsels for the claimant and the owner failed to point out any perversity in the said finding so as to require interference either way and the finding of the Tribunal assessing the quantum of compensation also does not call for any interference.

In view of the above discussion, there is no substance in the appeals, the same are, therefore, dismissed.

(ARUN BHANSALI)J.

PKS-6-7

RAJASTHAN HIGH COURT
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